

OHIO ETHICS COMMISSION

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Advisory Opinion Number 2001-01
January 26, 2001

Syllabus by the Commission:

- (1) This advisory opinion expressly affirms the holding of Advisory Opinion No. 91-002 that the Ohio Ethics Law and related statutes do not prohibit a city council member from serving as a volunteer for the city fire department, provided that he receives no definite and direct personal pecuniary benefit from such service;
- (2) This advisory opinion expressly affirms the holding of Advisory Opinion No. 91-002 that Division (D) of Section 102.03 of the Revised Code prohibits a city council member, who is also an unpaid volunteer for the city fire department, from participating in matters before city council that affect the individual officials and employees of the fire department and clarifies those matters in which the council member is not prohibited from participating;
- (3) Division (D) of Section 102.03 of the Revised Code does not prohibit a city council member, who is also an unpaid volunteer firefighter, from participating in matters that affect the fire department as a whole, such as decisions about budget, equipment, and appropriations for the fire department, and the officials and employees of the fire department as a class, so long as those matters do not result in a definite and direct individual financial benefit or detriment for the individual members of the fire department;
- (4) Division (D) of Section 102.03 of the Revised Code prohibits a city council member, who is also an unpaid volunteer firefighter, from participating in any matters, including hiring, removal, compensation and benefits determinations, and the signing of warrants and checks, that directly affect the individual interests of any official or employee of the fire department.

* * * * *

You have asked whether the Ethics Law and related statutes prohibit two city council members who are unpaid members of the city's volunteer fire department from participating in discussions and voting on appropriations and budget legislation affecting the fire department.

As set forth more fully below, R.C. 102.03(D) prohibits the city council members who are unpaid volunteer firefighters from participating in any matters that definitely and directly affect the financial interests of individual members of the fire department personnel. R.C. 102.03(D) does not prohibit the council members from participating in matters in which the fire department as a whole, or the officials and employees of the fire department as a class, have an interest, such as budget, equipment, and appropriations, so long as those matters do not result in a unique financial benefit or detriment for any individual fire department official or employee.

Council Members Serving as Unpaid Volunteer Firefighters

In your letter, you refer to Ohio Ethics Commission Advisory Opinion No. 91-002. In that opinion, the Commission concluded that R.C. 2921.42(A)(4) and 102.03(E) do not prohibit a city council member from serving as an unpaid volunteer paramedic with the fire department of the city, provided he receives no definite and direct personal pecuniary benefit from such service. See also Ohio Ethics Commission Advisory Opinion No. 2000-05 (a paid township volunteer firefighter is an employee of the township). As you correctly note, the conclusions in Advisory Opinion No. 91-002 would apply to your situation, and the two city council members are not prohibited from serving as unpaid volunteer firefighters for the city, so long as they receive no definite and direct personal benefit for the service. However, you have asked to what extent the council members may participate in matters affecting the fire department.

Volunteer Firefighter Voting on Matters that "Affect" the Fire Department

The Ethics Commission also concluded, in Advisory Opinion No. 91-002, that R.C. 102.03(D) prohibits a city council member, who serves as a volunteer firefighter, from participating in certain matters that affect the fire department. The Commission stated:

[T]he relationship between a city council member and the fire department which he serves as an unpaid volunteer paramedic would be such that the council member could be subject to an impairment of his objectivity and independence of judgment in deciding, as a council member, matters relevant to the city fire department. . . . Therefore, R.C. 102.03 (D) prohibits a city council member who serves as an unpaid volunteer paramedic from voting, deliberating, participating in discussions, or otherwise using the authority or influence of his office, either formally or informally, with regard to matters affecting the city fire department and its personnel.

R.C. 102.03 would not prohibit the council member from serving as the chairman of the safety committee; however, since a portion of the duties of the city council's safety committee concern matters relevant to the fire department, the city council member would be unable to participate as a member of council and as the chairman of the council's safety committee in matters relevant to the city fire department and its personnel while serving the city fire department as an unpaid paramedic.

Adv. Op. No. 91-002 (emphasis added).

Your question is whether R.C. 102.03(D) prohibits the city council members in the situation you have presented from participating in discussions and voting on appropriations and budget legislation affecting the fire department, as matters that are relevant to "the city fire department and its personnel."

Conflicts of Interest—R.C. 102.03(D)

The Commission based its decision in Advisory Opinion No. 91-002 on the restriction in R.C. 102.03(D), which provides:

No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties. (Emphasis added.)

"Anything of value" is defined, in R.C. 1.03, to include money, goods, chattels, promissory notes, warrants, checks, rights in action, real estate, and every other thing of value. The Ethics Commission has stated that a definite and direct pecuniary benefit or detriment is considered to be a thing of value under R.C. 102.03(D). See Adv. Ops. No. 88-004 and 89-005.

In Advisory Opinion No. 91-002, the Commission concluded that anything of value that resulted from council decisions that affect the fire department and its personnel was of such a character as to manifest a substantial and improper influence upon the council member who also served as a volunteer paramedic with respect to the performance of his duties. Therefore, in Advisory Opinion No. 91-002, the Commission concluded that the council member was prohibited from voting on matters that affect the fire department and its personnel.

In response to your question, this opinion serves to clarify the extent to which a council member is prohibited from participating in matters involving the fire department and its personnel. The Commission has determined that, where a city council member serves as a volunteer firefighter, and receives no compensation for his service, any benefit or detriment that the fire department as a whole would receive as the result of council decision is not of such a character as to manifest a substantial and improper influence upon the council member with respect to the performance of his duties as a council member. When a decision is made regarding the fire department as a whole, without any particular definite and direct benefit to the council member, any other volunteer, or any employee or official of the fire department, there is no "thing of value" provided to any of those parties. The "thing of value" precluded by R.C. 102.03(D), such as an appropriation, goes to the city fire department as a whole, rather than to any individual connected with the department. Therefore, this thing of value is not of such a character, in that instance, to manifest a substantial and improper influence upon a council member who is also a volunteer firefighter.

R.C. 102.03(D), therefore, does not prohibit city council members who are unpaid volunteer firefighters from participating in decisions that affect the interests of the fire department as a whole. For example, the city council members are not prohibited from

participating in decisions about the appropriations and equipment for, and the budget of, the fire department. The fact that the money to pay the salaries of fire department officials and employees would be included within the budget and appropriations for the fire department does not constitute a definite and direct benefit to those officials and employees, such that the council members would be prohibited from participating in those matters. However, as discussed more fully below, the council members who are unpaid volunteer firefighters are prohibited from participating in specific decisions involving the compensation and benefits paid to an official or employee of the fire department.

R.C. 102.03(D) also does not prohibit the city council members who are uncompensated volunteer firefighters from voting on matters that would affect all city departments, or that would generally affect the safety forces as a whole, unless a family member or business associate is definitely and directly affected by those decisions. See Adv. Op. No. 92-012. The council members who are uncompensated volunteer firefighters also would not be prohibited from participating in the selection and appointment of a safety director.

Fire Department Personnel

The Commission also stated, in Advisory Opinion No. 91-002, that a city council member who serves as an uncompensated volunteer firefighter is prohibited from participating in matters before city council that affect the interests of the personnel of the fire department. The Commission reasoned that anything of value that the department personnel would receive as the outcome of a vote before city council is of such a character as to manifest a substantial and improper influence upon the council member, who is a member of the fire department personnel, with respect to the performance of his duties as a council member. Adv. Op. No. 91-002. At this time, the Commission expressly affirms its decision in Advisory Opinion No. 91-002 that a city council member, who is also an unpaid volunteer for the fire department, is prohibited from participating in matters that have a definite and direct impact on the individual officials and employees of the fire department.

By contrast with his relationship to the fire department as a whole, a city council member who is a volunteer for the city fire department does have a relationship with the individual officials and employees of the fire company such that his objectivity and independence of judgment could be impaired with respect to matters that have an individual impact on those officials and employees. As a volunteer firefighter, the council member is subject to supervision by the fire chief, and any assistant chiefs or other managers of the department. These individuals must make decisions about the operation and management of the fire department which will directly affect the council member, as a volunteer firefighter. It is likely that a council member would be influenced, in making decisions about an individual member of the department personnel, by the relationship he has with that individual as a volunteer firefighter.


Therefore, R.C. 102.03(D) prohibits a city council member who is a volunteer for the fire department from voting, discussing, deliberating, or taking any other action on matters that affect the individual interests of any member of the city fire department personnel. For example, the city council member would be prohibited from discussing, deliberating about, or otherwise participating in decisions before council affecting the employment, compensation, or benefits for

the fire chief or other fire personnel. These would include matters such as changes in compensation or benefits determined by individual working conditions, the assignment of duties, evaluations, and actions involving promotions, discipline, lay-offs, and termination. A council member who is a volunteer firefighter is not prohibited from participating in matters that affect all fire department personnel, uniformly and without unique or special benefit to any particular fire official or employee. See Adv. Op. No. 92-012. As stated above, a city council member who is also a volunteer firefighter is also not prohibited from participating in general budgetary matters and appropriations of funds to the fire department, even though the budget and appropriations will include funds for compensation and benefits to fire department officials and employees, so long as there is no definite and direct unique or particular benefit, to any of those officials or employees, contained in the budget and appropriations.

Conclusion

As set forth more fully above, R.C. 102.03(D) prohibits the city council members who are unpaid volunteer firefighters from participating in any matters that definitely and directly affect the financial interests of individual members of the fire department personnel. R.C. 102.03(D) does not prohibit the council members from participating in matters in which the fire department as a whole, or the officials and employees of the fire department as a class, have an interest, such as budget, equipment, and appropriations, so long as those matters do not result in a unique financial benefit or detriment for any individual fire department official or employee.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules. Therefore, it is the opinion of the Ohio Ethics Commission, and you are so advised, that: (1) This advisory opinion expressly affirms the holding of Advisory Opinion No. 91-002 that the Ohio Ethics Law and related statutes do not prohibit a city council member from serving as a volunteer for the city fire department, provided that he receives no definite and direct personal pecuniary benefit from such service; (2) This advisory opinion expressly affirms the holding of Advisory Opinion No. 91-002 that Division (D) of Section 102.03 of the Revised Code prohibits a city council member, who is also a volunteer for the city fire department, from participating in matters before city council that affect the individual officials and employees of the fire department personnel and clarifies those matters in which the council member is not prohibited from participating; (3) Division (D) of Section 102.03 of the Revised Code does not prohibit a city council member, who is also a volunteer firefighter, from participating in matters that affect the fire department as a whole, such as decisions about budget, equipment, and appropriations for the fire department, and the officials and employees of the fire department as a class, so long as those matters do not result in a definite and direct financial benefit or detriment for the individual members of the fire department; and (4) Division (D) of Section 102.03 of the Revised Code prohibits a city council member, who is also a volunteer firefighter, from participating in any matters, including hiring, removal, compensation and benefits determinations, and the signing of warrants and checks, that directly affect the individual interests of any official or employee of the fire department.



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